

IN THE FEDERAL COURT FOR THE EASTERN DISTRICT OF TENNESSEE

**CRUZ TUCKER AND AMBER TUCKER)
AS PLAINTIFF'S, BROUGHT ON THEIR)
BEHALF BY)
THOMAS E. TUCKER AND)
AVRIL TUCKER, AS PARENTS)**

JURY DEMANDED

Vs.

No: 3:20-cv-00098-JRG-HGB

THE TENNESSEE VALLEY AUTHORITY)

AMENDED COMPLAINT

Comes now the Plaintiffs, by and through counsel pursuant to the Federal Rule of Civil Procedure 15 doing so as a matter of right under said Rules of Procedure to file this Amended Complaint and in so doing states as follows:

1. All Plaintiffs reside at 202 Shipe Road, Claxton, TN 37849.
2. TVA can be sued under statute and is liable for its actions pursuant to the Tennessee Valley Authority Act of 1933 and be served with process at 400 West Summit Hill Drive, Knoxville Tennessee 37902.
3. TVA is in part a private corporation that sells Coal Ash after being burned at extraordinarily high temperatures that cause the substance to become poisonous to humans as a result. Afterwards TVA extracts, refines, processes, and sells the remains of the toxic burnt coal. The burning at such extreme temperatures enhances its toxicity and radioactivity.
4. After the above referenced occurs, TVA sells the radioactive materials and toxic metals for immense profit without general public knowledge. This lucrative

commercial activity is ultrahazardous making it all the more important TVA engage in the activity openly and safely.

5. However, TVA has not transparently been a good corporate citizen in this regard, and making it even more egregious TVA has selected lower income communities for creation and storage for this poisonous activity, because lower income communities have a decreased ability to resist this hazardous practice by the TVA due to lack of money, compared to TVA's ability to falsely shape beliefs and opinions due to its Billion Dollar PR marketing and lobbying power.
6. Upon information and belief, during such time TVA through it's own hidden risk analysis was aware that a child under 5 years of age should not be exposed to inhalation and potential over ½ ounce per day.
7. The Plaintiff's residence is approximately (.3) three tenths of mile from the Bull Run Steam Plant, a Bottom Ash storage sluicing facility that emits poisonous Coal Fly Ash. Bull Run is owned and operated by the Tennessee Valley Authority (hereinafter known as "TVA").
8. All Plaintiffs have been exposed to poisonous Coal Fly Ash through trespassing emissions on to their property, and from their grandfather regularly bringing Fly Ash around the children daily basis due to his occupation with a TVA hazardous remediation subcontractor.
9. The grandfather, like most all people in the area, believed TVA's misrepresentation of Coal Fly Ash (hereinafter also referred to as CCR) is safe, despite the fact some surrounding states have recently been removing the substance in its entirety due to it causing illness and death.

10. At all times material herein, TVA was motivated in part to dishonestly perpetuate this safe misnomer in order to more easily extract, refine, encapsulate, market, and sell its constituent metals and or elements from the poisonous coal. The enormous covert profit from sale contributed to an inordinate liberal bonus structure for upper management, and in relevant instances subcontractors that they tried to protect in various risk analysis.
11. As a result of the toxic exposure referenced in this complaint, minor Plaintiff Thomas Tucker was exposed to both pregestational and post gestational poison, as was minor Plaintiff Avril Tucker. This exposure caused the minor Thomas Tucker to suffer from heart defects, lung problems, skin problems, neurological and other severe health problems. Except for the heart problems minor Avril Tucker suffers from same.
12. These were the same health problems that TVA fraudulently concealed could occur through exposure to the general public and at risk population groups.
13. All other Plaintiffs suffer from respiratory, sinus, and/or lung problems.

STATEMENT OF THE CASE

14. As stated, all Plaintiff's suffered from Coal Ash intruding into their persons by both TVA's emitting it onto their property into their home, and also by the grandfather who was told Fly Ash was safe on a routine basis. As a result the minor Plaintiffs have incurred life long injuries, surgeries at Vanderbilt, necessary medications, and all therapeutic treatment needed likely for life. These expenses, procedures, and all future medical costs were proximately caused by TVA.

15. Compounding the hazardous nature of the children and families poisonous exposure is that it also was from a more toxic version of the substance known as Bottom Ash.
16. TVA knows the dangers of Bottom Ash, its storage, and its effects on air and in water supplies.
17. Bottom Ash is the noncombustible form of coal waste. This poisonous waste contains radioactive isotopes, mercury, beryllium, thallium, barium, arsenic, molybdenum, cadmium, chromium, and other poisons that kill people.
18. This ash is so dangerous that when it is blown onto property it is so corrosive that it eats the paint and metal off motor vehicles causing damages to property and property values where people reside.
19. Moreover, the poisonous corrosive nature of the toxic substance is so bad that in paralleled comparison, it destroys people who have regular, prolonged, or intense contact with it.
20. The toxic ash causes cancer and a multitude of serious health problems according to TVA's own documents. However, those documents aren't shared with the public through press releases, articles, town hall meetings, or otherwise.
21. Moreover , the bottom line is TVA knows that children are particularly vulnerable to the poisonous ash and they continue to cover up , and lie to people at public forums, false press releases, and ect.
22. All of the fly ash constituent properties are noted by the federal register as toxic, yet due to their and the industries motivation to maintain EGREGIOUS profit the through contribution abilities try to game the system by analyzing in documents legislators propensities, lobbying significance of legislators , and manipulate

scientific entities in the energy industry such as ERPI, and the American Coal Association.

23. This misuse of ratepayer contribution monies has resulted in entities such as the American Coal Association to tell governments that the poisonous ash is safe enough to sprinkle on your Wheaties, while knowing it has contributed to birth defects that are so severe that children have been born without limbs , conjoined at the head, arms, legs , and ect. If they fetus survives. In so doing they dishonestly interfere with a woman's right to choose what to do with their body, including keeping a child. This is not only criminal, it interferes with constitutional right to preserve life or the choice of preserving there on body in certain instances.
24. This abuse of children , females, families, and the general public located near impoundments that stretch across the country that is tantamount to murder.
25. This is not how TVA was originally created to purposely function, especially through acts as mentioned above that fraudulently conceal the matters affecting lives, families, and human health.
26. TVA so actively engages in fraudulent concealment that they destroy or contribute to the destruction of evidence and material that would be truthful and preserve the integrity of matters that affect human health, even in analyzing mortality.
27. Plaintiff's want to make it perfectly clear that the vast majority of individuals that are employed by TVA are incredible people. However, due to the vast expansion of the agency a lack of private accountability evolved in to a state of massive over prioritization of image, a tremendous over emphasis on risk management,

and a deceptive level of strategic communication that flows between the PR department and certain members of the Office of General Counsel, despite warning from the TVA Office of Inspector just a few years ago.

28. These actions not only constitute grounds for punitive damages, but removal of tort caps.

29. After TVA's actions of denial of honesty in Memphis, Gallatin, Kingston, Bull Run, and the Ash spill remediation workers, their dishonest conduct involving the denial of the safety of their poison should not be tolerated by the state nor the ratepayer

30. TVA has become so large that it is essentially allowed to regulate itself without local transparency or accountability to the ratepayer.

31. As a result, TVA is an entity that has grown to large without private efficiency, transparency, or accountability.

32. As a result TVA has secretly disregarded public ratepayer health (creating extreme personal health care cost), created risk analysis that factor in financials that lack the consideration of human health in order to support extravagant salaries, bonuses, and lifestyles instead of having proper focus upon the health of the rate payers that subsidize their lavish financial packages.

33. Examples of the extravagant lifestyles include but are not limited to the following:

- a. Spending thirty million dollars on aircraft, including over 8 million on Dallas Cowboys owner Jerry Jones Helicopter, and two additional jets for approximately 23 million, totalling over 30 million dollars in one fiscal year.

- b. Paying former CEO Bill Johnson approximately 44 million in compensation, with a substantial portion of the proceeds being allocated for him to retire (not to work for the ratepayers).
 - c. For example, the wellinsured conglomerate would threaten hard working ratepayers with increases in rates due to cost from hazardous problems TVA created (i.e. the Kingston Ash Spill).
34. Due to mismanagement and hiding such from the board of directors, the TVA, once known for service to the Tennessee Valley, has now evolved into a corporate machine that is so large and it has become out of touch with local communities. Upper management now ignores the health of the ratepayer for profit, without transparency even to its own board of directors.
35. This is exemplified by treating humans actually with the worth of beans when formulating their bean counting risk analysis with lack of proper consideration for human health in their health risk assessment.
36. The above referenced occurs even though TVA knows the emitted debris eats cars just like it does people, in particular minors and senior citizens, but is dishonest to human detriment, the humans that pay their salaries.
37. Moreover, because they are losing Coal Fly Ash verdicts throughout the state, TVA now tries to coerce local utilities to sign twenty year contracts to maintain the lavish executive lifestyle .
38. As a result, TVA plans to slowly remove, minimize, and cover up the health damage caused by poisonous Fly Ash because they know the liability despite insurance coverage to help pay the medical expenses of those so affected, including the minor Plaintiff's.

39. The previously referenced was not the intended purpose for the creation of the TVA. It was enacted to serve the people who pay its rates, and in turn what has turned into exorbitant salaries and packages.
40. A corporation should not ignore the safety of children, its workers, nor the safety of nearby ratepayers for exorbitant gain and profit.
41. Therefore, with TVA's pattern conduct at Bull Run that produces and stores Bottom Ash that is falsely represented to be safe to the Claxton Community is intolerable.
42. Without disclosure of the true facts that are in TVA's own internal documents, that the ash targets human organs, in particular in children that range from: neurological, lung, sinus, skin, heart, liver, kidney, endocrinological, and other immunological disorders. Moreover, TVA ultimately fails to disclose the hazardous coal waste composed of numerous toxins, as noted by the Federal Register, can cause cancer.
43. Ironically, unbeknownst to the ratepayers who believed TVA was created to serve them as the payers of their salaries, TVA engages in the processing and selling of the hazardous waste toxic metals, including related isotopes to uranium. In this refined, extracted, or encapsulated form the sale of toxic ash residue for millions of dollars to support upper management's extravagant lifestyles.
44. The TVA wants to continue storage of the dangerous substance so that it can continue to extract, encapsulate, refine, and sell the coal ash to massively increase commercial profit, to the detriment of lower income communities.
45. An example of TVA's corporate exploitation was the pattern of how this globally insured conglomerate would secretly further manipulate public opinion by

threatening rate increases as TVA had to do with the Kingston Ash Spill, yet had insurance monies receive to cover the disaster and used those funds to clean up the toxic mess it created. This occurred at the same TVA was profiteering off the sale of the ash unbeknownst to the general public.

46. What is even more outrageous to public decency, TVA performs substantial amounts of this process of contamination and injury to public health in lower income areas. These areas, due to economics, lack a powerful political voice due to personal economics and contribution ability.

47. In this case more dangerous Bottom Ash and gypsum was emitted in air, and leached from Bull Run. This substance has been harming the local Claxton Community for many years, despite the effective effort by TVA to fraudulently mislead the area.

48. TVA did this without distinguishing or disclosing the toxic amounts of constituents, the type or accurate test results, or explanation about the affects upon the immunocompromised.

49. Compounding the hazardous conditions, in addition to proximity and exposure from Bull Run, the minor Plaintiffs were exposed to the grandfather's daily exposing the Coal Ash from work around the family.

50. Agents for TVA told the grandfather the ash was safe enough to eat and provided no clothing decon.

51. Therefore, as a result of TVA's lying and fraudulently concealing the dangers of the ash to people the grandfather innocently exposed his family to Fly Ash in large amounts, including minor Plaintiff's, all without notification by TVA of the proper risk to human health.

52. As a result of these combined routes of exposure, the Plaintiff's incurred the above described injuries.

**CAUSES OF ACTION
FRAUD AND FRAUDULENT CONCEALMENT**

53. As early as the 1950' TVA was placed upon notice by various medical professionals that what they termed as Fly Ash caused serious health problems in the Tennessee Valley, including but not limited to near death experiences by children. TVA was also notified by same from the United States Government.

54. TVA was further notified by workers and the federal government that the emitted CCR's (or as they described as ash or dust) would corrosively eat paint on vehicles nearby Bull Run Steam Plant. Then, after eating through protective coatings of paint, the poisonous corrosive substance would eat through the metal on vehicles.

55. This corrosive effect of TVA's combusted coal exists despite loss of numerous lives through inhalation, and the fact the substance is still eating cars.

56. Yet this harmful corrosive poison has been fraudulently described by TVA as a nuisance dust that was " safe to breathe", "to eat", "to drink", and "it was consistent with soil", absent the revelation of its poisonous constituents. This still occurred even after paying approximately one half a billion dollars for emissions from Bull Run and Kingston injuring thousands and sometimes killing people in neighboring North Carolina on a yearly basis.

57. The degree of fraud and dishonesty went to such an inherent degree of untruth, that TVA openly stated in press releases and public presentation that the ash was no more radioactive than an approximate grain of table salt.

58. This fraudulent description endured a heightened degree of credibility because TVA creates a charitable government image, this caused people to rely detrimentally on the false message and image so created.
59. This payment, of that sum to the citizens of over \$500,000 for serious injuries and death in North Carolina for sparse inhalation from the TVA CCR, is indicative of how dangerous the CCR can be in sparse contact.
60. These Plaintiff's suffered from prolonged and/or intense exposure in comparison , magnifying the health risk.
61. Despite the new hope of the hiring of a new CEO, this dishonest message was still recently being tolerated and promoted in Claxton by TVA.
62. The culture has not changed since TVA was notified several years ago from the TVA OIG that TVA had too much of a focus on risk management and public relations instead of doing what was right.
63. Despite being placed on notice by the OIG, TVA has continued to engage in a dishonest public relations program to term the coal combustion by-products in a less harmful effect on the listener. TVA's PR message regarding this substance by using such terminology like... "nuisance dust", "dust", and "trace amounts" to make a poisonous substance appear harmless, when it can be lethal.
64. TVA knew and became aware of long ago how it's CCR's or Fly Ash (as lightly termed) had pregestational effects upon the unborn causing abortive miscarriages and/or births defects.
65. TVA became aware that children under five years of age should not be exposed to the toxic substance regularly in amounts as small as millimeters, despite building recreational facilities next to its impoundments yet concealed it.

66. TVA has lied to local communities, including Claxton, by means of issuing false press releases and fake community educational outreach meetings to mislead the public about the Fly and Bottom Ash. TVA has conducted this activity in order to commercially subsidize massive managerial bonuses through the sale of ash.
67. This improper focus has led to a misplaced dereliction to proper ash monitoring, handling, emitting, storing, failing to protect overall public health, and mortality.
68. TVA has grown to deviate from true Republicanism by disrespecting localities, free market integrity in business dealings, transparency, honesty, and the Republican principle of respect for local input and rule .
69. Without such respect for transparency, locality, and adherence to honoring its honest commitment to ratepayers, TVA dishonestly cost the lives of human beings.
70. As a result of TVA's fraud and reckless concealment of dangers in all the referenced paragraphs the Plaintiff's have been injured as so previously described due to its reckless allowance of contact with lethal CCR's.
71. By engaging in these most severe actions listed of fraud and deception for extravagant bonus and financial gain in a financial conspiracy that harms people and the environment TVA has violated the following:

- A) 42 USC 6928
- B) 42 USC 9603
- C) 33 USC 1319
- D) 42 USC 7401
- E) 18 USC 1241;
- F) AND T.C.A 47-18-104 Against rate payers

STRICT LIABILITY

72. The act of TVA to recklessly poison CCR's (Bottom Ash) in the water and air in Claxton and surrounding areas constitutes an ultrahazardous activity because contact with the radioactive substance can cause cancer and kill people as referenced in their own documents and verified by a jury's, judgments throughout the state.
73. TVA has intimidated, harassed, laid off and injured honest employees who tried to notify them of hazards and TVA or their agents have been subject to jury verdicts regarding this intolerable behavior (sought to have verdicts like the ones in Gallatin to be rescinded altered or amended by burning the results in financial cost of appeal. TVA has been held accountable for intimidation for those that disclose safety concerns in regards to nuclear safety , and has been held accountable by the Nuclear Regulatory Commission for safety cover ups. The same holds true with regard to TVA's being held accountable for not being honest in regards to fly ash by other entities such as MGLW and juries. Yet there is no migrational change towards integrity towards safety. These actions are reflective of their knowledge of the hazardous nature of their business conduct for profit, and the severe ramifications that would occur if they accurately addressed safety issues. It just simply cost more money, with an entity that has a group think in the upper management referenced that focuses on prioritization of greed over safety.
74. Therefore, due to the ultrahazardous nature of the substance, of which TVA completely controls, it is strictly liable for its damages to Plaintiff's.

TRESPASS

75. TVA's improper, reckless lack of controlling its toxic ash into the air, water, environment, onto property, and into their bodies without permission/consent knowing it endangers the safety of the Plaintiff's. This creates an unlawful trespass.
76. Further, pursuant to Tennessee Common Law this form of toxic trespass is so outrageous that it entitles Plaintiff's to punitive damages.

TEMPORARY NUISANCE

77. The improper emitting, leaching, lack of controlling, and improper handling of it's hazardous ash (CCR's) from Bull Run has created a temporary nuisance by allowing poisonous Fly Ash to migrate into the local air and water in the nearby community, including the intrusion of the property of the Plaintiff's.
78. Having a toxic poisonous substance that can cause illness, including cancer, constitutes temporary nuisance causing aggravation, inconvenience, and an unsafe loss of use of their property that could be corrected by TVA..

RES IPSA LOQUITUR

79. The handling, emitted, seepage, and migration of the poisonous Fly Ash was in "complete control" of TVA at Bull Run, and they recklessly caused the previously referenced to occur In short the tortious acts speak for themselves.
80. The above referenced facts in this Complaint would not have occurred absent negligence/recklessness of the TVA.

REVERSE CONDEMNATION

81. By engaging in the previously referenced ultrahazardous acts of negligence TVA has effectively taken Plaintiff's property or devalued it to the extent that it is rendered unsafe/suitable for use.

82. Thus, the adult Plaintiffs are entitled to just compensation pursuant to TCA 29-15-123.

PERSONAL INJURY

83. All of the Plaintiff's have incurred the previously referenced injuries described in this complaint.

84. The injuries were proximately caused by TVA. They were exacerbated by the fraudulent concealment of TVA.

85. The fraudulent concealment leads to people not knowing the symptoms to relay to their doctors. This dishonest practice persuades doctors to believe TVA's hazardous ash is/was safe and not look for a causal relationship of symptoms and medical conditions, when internal TVA documents reference health conditions caused by the ash, symptoms to people to look for, and targeted organs.

86. TVA did this to minimize liability even when insurance was allocated to compensate desiring ill victims.

87. However, despite TVA's enormous executive compensation structure, its executives act as if their exorbitant compensation packages are worth more than ratepayers' lives who become injured through their recklessness.

**OUTRAGEOUS CONDUCT/ INTENTIONAL/
RECKLESS INFLICTION OF EMOTIONAL DISTRESS**

88. The conduct of TVA should not be tolerated in a just and civilized society.
89. When an entity that was enacted to serve others, ignores safety, and fails to educate and protect people from hazards it creates , said actions should not happen if an entity has any proper respect for integrity.
90. Such conduct based upon the poisonous nature of the toxins it surreptitiously produces without proper warning and protection, would not be tolerated by any civilized society when given full disclosure.
91. All acts described above caused the following damages to the minor Plaintiffs as set forth in the preceding paragraphs.
92. Minor Cruz Tucker has had to endure seven surgeries at a mere 19 months of age, while suffering from neurological, heart, lung, skin, and other severe health problems that will follow him for life.
93. Amber Tucker suffers from permanent severe injuries as well that include, but are not limited to, neurological. The conduct complained of was so reckless/intentional that it has resulted in serious neurological and serious mental injury.
94. All Plaintiffs suffer from lung, skin, sinus, and other health problems.
95. Currently, both children will need lifelong medical care in the amounts of millions of dollars.
96. The parents have also incurred health injuries, property damage, and understandably extreme emotional pain and suffering.

Wherefore, as a result of TVA's reckless disregard for human life, its dishonesty, and all other attendant facts and circumstances that should not be tolerated in a just and civilized society, the Plaintiffs hereby pray for an award of any amount fair not to exceed 30,000,000 or any amount of reasonable insurance coverage.

Further, due to recent changes in the law, Plaintiff's pray for any amount fair in punitive damages, and removal of any tort caps for TVA altering, fabricating, or misleading the evidence and the Plaintiff's and the public in regards to any evidence.

Respectfully Submitted, this 11th day of March, 2020

/s/ James K. Scott
James K. Scott, BPR #016893
Keith D. Stewart
J. Tyler Roper
625 Market St., 7th Floor
Knoxville, TN 37902

CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of March, 2020, I have electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all parties and counsel of record by operation of the Court's CM/ECF system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

James S. Chase jschase@tva.gov

/s/ James K. Scott